Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)
	)
Developing a Unified Intercarrier)	CC Docket No. 01-92
Compensation Regime	)

COMMENTS OF THE MICHIGAN EXCHANGE CARRIERS ASSOCIATION, INC.

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Submitted by:

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I. INTRODUCTION

These comments are filed by the Michigan Exchange Carriers Association, Inc. ("MECA") on behalf of its thirty-three (33) member companies who are rural, incumbent, basic local exchange carriers ("LECs") in Michigan, with a combined total of approximately 204,000 access lines. MECA is an association that preserves, advances and advocates for rural local exchange carriers in Michigan in matters of regulation and interconnection.

II. SUMMARY OF ARGUMENTS

In general, bill-and-keep may have some merit for use for local service competitors where service areas overlay each other and only under certain conditions. However, it has no merit for interexchange traffic, such as toll access, where networks do not overlay. The best approach for all traffic would be to exercise forbearance authority to allow freedom of contract and the free market to control. Bill-and-keep should only be one of several options available to carriers for intercarrier compensation.

The feasibility of bill-and-keep relies on the assumption that the calling party and called party benefit equally. If this assumption proves wrong, then the subsequent conclusions fail. It is MECA's position that the true beneficiary of a call is the party that initiated the call. Therefore, the conclusions drawn by the Patrick DeGraba, December 2000, OPP Working Paper No. 33 and the Jay M. Atkinson and Christopher C. Barnekov, December 2000, OPP Working Paper No. 34 white papers are largely incorrect.

Moreover, numerous public policy goals should be considered and given more weight than efficiency in evaluating the merits of an intercarrier compensation regime. Promoting universal service, encouraging a healthy infrastructure, and moving toward complete deregulation are important goals that should

be emphasized. Bill-and-keep for toll access would be detrimental to customers in rural areas, would cause rate increases, and would drive customers off the telecommunications network.

III. SPECIFIC COMMENTS

A. COMMENT ON APPROPRIATE GOALS FOR INTERCARRIER COMPENSATION RULES IN COMPETITIVE MARKETS.

1. Efficiency.

Should efficiency be the sole or paramount goal of intercarrier compensation policy? How should the Federal Communications Commission ("FCC" or "Commission") evaluate whether a particular regime encourages efficiency? Should the FCC consider whether a particular pricing regime encourages efficient use of the network by end-users? Should the FCC consider whether a particular pricing regime encourages efficient investment in, and deployment of, network infrastructure (including broadband)? Should the FCC consider whether a particular regime is technologically and competitively neutral? (¶33).

"Efficiency" can only be achieved by allowing a deregulated market to operate. Any changes to the current regulatory scheme must primarily consider whether the change will lead to an unfettered market if the Commission truly wishes to promote efficiency. Otherwise, changes to regulation will be analogous to a dog chasing its own tail. The Commission would be removing one set of inefficiencies and creating a new set of opportunities for arbitrage. One either believes that the free market can resolve issues and efficiently allocate resources or one does not.

The telecommunications industry was initially regulated because it was believed that it had the properties of a "natural monopoly." Now, with the flood of technological innovation, those properties are less pronounced. Therefore, the need for regulation is lessened. If the Commission chooses to continue regulation, then efficiency should not be the sole or paramount goal of intercarrier compensation policy. It is just one factor to consider and balance against other public policy goals. Other goals, discussed below, are equally or more

important. Moreover, little emphasis should be placed on efficiency since it is not quantifiable and measurements of efficiency are subjective.

"Efficiency" is such a broad and unspecific term that it can be used to support or defeat almost any proposal depending on the perspective from which, or the context in which, it is applied. For example, one proposal could be efficient for the manufacturer and supplier market segment, but inefficient in supplying necessary capital to the market. The telecommunications market is made up of many market segments which can be affected in different ways by regulatory policy. An attempt to balance interests in one market can cause adverse effects in a complementary market in the industry. This is perhaps illustrated by the drying up of capital to the competitive local exchange carrier ("CLEC") segment, which could be described as "inefficient." Manufacturers and suppliers of equipment have also fallen on hard times. Could these events be described as "inefficient" or the market cleansing itself of the inefficiency? Regulation is not able to get rid of the inefficient. Regulation by its nature favors one group over another.

It is fruitless to attempt to evaluate whether a particular regime would encourage efficiency. This cannot be treated as if it were a scientific process that can produce a subjective-free, quantifiable result. There are multiple ways to evaluate "efficiency" depending on how it is defined or how it is measured. In addition, there are multiple perspectives from different market segments. It could be looked at in terms of connectivity, pricing, utilization, or investment, among others.

In addition, someone must decide what particular level of each of these is "efficient." For example, from the universal service perspective, some could consider penetration as the most important goal. However, the cost of reaching 100% penetration would require subsidies from some customers to others and would raise the prices for some. Is that efficient? What then is "efficiency?" 99% penetration? 97%

penetration? There is simply no way to determine objectively what is "efficient," let alone to determine whether a particular regulatory scheme will encourage it. It is all subjective. In essence, because of the variables, a plausible sounding argument based on "efficiency" can be made in support of or against any particular regulatory scheme. "Redundancy" can be considered to be "efficient." Bill-and-keep can be considered to result in inefficiency since it will limit the incentive to invest in the network, especially the rural network. The correct question to be answered is whether a change to regulation is going to lead to a competitive market, which by definition is one where no provider can affect the market price - where each is a "price-taker" not a "price-maker."

Who better knows about efficiency in any particular context than the ones making the investment, borrowing and lending money, and responding to customer needs. They are the ones who should be making the choices regarding efficiency. The people most aware of the details are the best judges of what is efficient in light of their own market, financial and service goals. If they think that a bill-and-keep arrangement will promote these goals, then they can choose it and negotiate for its use. Bill-and-keep should be an option, as it is now, but should not be forced on any market segment.

Furthermore, emphasizing whether a particular regulatory regime would encourage efficient use of the network by end-users is inappropriate. The federal Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the "FTA") strongly espouses principles of universal service, including the availability of quality services, access to advanced services and comparability of services and rates between urban and rural areas. See 47 U.S.C. 254. The FTA establishes a policy in favor of removing market entry barriers. See 47 U.S.C. 257. It encourages the provision of new technologies and services. See 47 U.S.C. 157. It also has a purpose of making available so far as possible to all people of the United States a

rapid, efficient communication service with adequate facilities at reasonable charges. See 47 U.S.C. 151. Thus, the more appropriate focus is on expanding the network and offerings available to end users at affordable and reasonable rates.

No regulatory pricing scheme can be a substitute for competition, for competition is the only true way of encouraging efficient investment in and deployment of network infrastructure. In fact, a mandatory and uncertain pricing scheme such as bill-and-keep can make it difficult to raise money in the capital markets.

Further, it is laudable to seek "competitive neutrality" if it means that a regulatory scheme will not favor one carrier over another or one technology over another. But even at that, no regulatory scheme can ever be a substitute for the free market. Competitive neutrality cannot be achieved by regulation. The goal of competitive neutrality should not be used to justify decisions that will favor temporarily one segment of the market over another. It should not be used to attempt to benefit or economically support any particular segment or any particular group of providers. With competition, there will be winners and losers. The Commission should not try to make some half-winners or half-losers. This kind of regulation led to the failed policies that first placed California in an energy "crunch" and now has California taxpayers locked into multi-year contracts for electric power at rates that exceed those now available in the market. Partial deregulation is not arguably "competitively neutral." It simply acts to punish good competitors and reward bad ones, or it is putting all of them in an equal level of pain.

Regulators should not feel that they need to be players, but should opt for forbearance whenever possible. At the very least, the FCC should be asking whether its policies are moving toward or promoting a competitive market. This concept is grounded in the FTA by its emphasis on contracts and deregulation.

Competition requires the ability of companies to develop and offer services at prices set by contract or tariff. The goal of regulation at this time should be to move closer and closer to deregulation and true competition. Competition is not neutral. There are winners and losers in the free market. "Competitive neutrality" is like playing in a pee-wee soccer league where no one keeps score. The point of competition is to reward innovation, efficiency, and quality, and to eliminate inefficient players. Regulation inadvertently will benefit some players at the expense of others, producing complacency or arbitrage.

This does not mean that there should be no fairness in how companies compete. However, issues of competitive fairness are addressed adequately by anti-trust and fair business practices law. They provide a sufficient framework for competition.

2. <u>Degree of Regulatory Intervention</u>.

Comment on the weight to be given to consideration of the degree of regulatory intervention required to implement various regimes as well as the extent to which particular proposals require regulatory intervention (¶34).

It would be better if the Commission would exercise its forbearance authority to limit or end its regulatory intervention in the telecommunications industry and allow private parties to contract freely and compete in the open market. However, there is no evidence that the Commission has shown any tendency to give up any regulatory power. After all, the Commission is considering bill-and-keep largely because of the problems caused by its failed policy with regard to Internet Service Provider ("ISP") bound traffic. As stated by Commissioner Furchtgott-Roth in his separate statement accompanying the Notice of Proposed Rulemaking ("NPRM"), "For its entire history, the Commission has regulated telecommunications rates with a heavy, clumsy, at times sadistic, and all too visible hand." In light of past history and the tendency of federal bureaucracies to create, maintain and expand a role for themselves, even asking this question seems

disingenuous. If the Commission were really concerned about the degree of regulatory intervention, it would deregulate telecommunications to the greatest extent possible, retaining only a dispute-resolution function and perhaps general "just and reasonableness" review.

3. Resolution of Issues and Creation of New Problems.

a. Should the FCC consider whether a particular proposal would resolve difficult issues characterizing current regimes and would it create new problems? (¶35).

Yes, of course. Further, MECA is encouraged that the Commission seems to understand that there will always be unintended consequences when implementing a new regulatory scheme.

b. Any alternative goals?

The Commission should consider numerous alternative goals that are not identified in the NPRM and should put more weight on these goals than those mentioned. The following goals are very important:

- Remove market entry barriers.
- Encourage a technologically transparent and ubiquitous network.
- Promote Universal Service.
- Promote stability and a strong, healthy telecommunications industry that can compete for investment.
- Avoid unknown consequences and problems associated with untried regulatory schemes.

- Encourage deregulation and true competition (by phasing out government intervention and regulatory authority over telecommunications) where no carrier can set the price in the market.
- Promote customer benefits, such as comparability between urban and rural areas.
- Encourage the availability of quality services.
- Encourage the provision of new technologies and services.

4. Single Unified Approach.

Comment on the advantages and disadvantages of moving to a single, unified approach to intercarrier compensation (¶36).

A single unified approach is disadvantageous. If there must be continued regulation, that regulation should not be uniform simply for the sake of uniformity. Bill-and-keep will not work for toll access services, especially since many rural areas are served by small LECs who rely heavily on toll access revenue to recover fixed costs. Changing the regulatory scheme to bill-and-keep will not only likely produce new opportunities for arbitrage, but also probably require increased rates to end users.

B. COMMENTS ON BILL-AND-KEEP ARRANGEMENTS.

1. Policy Justifications.

a. Comment on whether both the calling and called party benefit from a call, and on the implications that cost causality has for choice of a regime (¶37).

Use of the term "cost causality" attempts to assign causation or abstract benefits to a group of customers, which is a useless venture. Who benefits more from an unsolicited call from a telemarketer? Who benefits more from a call to a parent from a child at school? (It may depend on whether that call from

college is asking for more money or is out of home sickness.) Also, many people benefit by merely having a phone with the ability to make a call – even if they do not regularly make them – because security may be desired. "Cost causality" is as vague as determining the relative efficiency of different regulatory schemes. This is non-scientific guesswork, which can be argued either way, that can be used after the fact as a justification for the chosen regulatory scheme. There is no way to conclusively determine whether the calling party or the called party benefit equally or more. However, intuitively, the caller would seem to benefit more since the caller took the step to initiate action.

b. Comment on monopoly and pricing power of terminating carriers, unreasonable charges, incentives to leverage and artificial incentives' contribution to traffic imbalances (¶38).

Carriers will always seek ways to game any regulatory scheme. As to monopoly and pricing power and unreasonable charges, these things can all be controlled by allowing competition to develop. There are already anti-trust and fair business practices laws on the books to provide sufficient boundaries within which companies must operate. History has proven that any regulatory scheme, no matter how well-intentioned or thought out, will cause distortions. Rather than creating a new and complex regulatory environment that attempts to further micro-manage intercarrier compensation arrangements, the Commission should allow private enterprise to flourish. As stated by Commissioner Furchtgott-Roth, "[T]he unfettered pursuit of private interest, including through contracts, will lead to greater social welfare gains than the intentional, including governmental, efforts to promote welfare. Simply stated, contracts, rather than government regulation, are the surest way to promote the public interest."

2. <u>Efficiencies of Bill-and-Keep Arrangements</u>.

a. Termination Costs.

(1) Comment on rationales why bill-and-keep arrangements may be efficient, including rationales in DeGraba and Atkinson - Barnekov working papers and any other rationales (¶44).

The purported "rationales" in the DeGraba and Atkinson-Barnekov working papers are based on some pretty heroic assumptions. Without these assumptions, especially the assumption that both the called and the calling party benefit equally, their models do not work.

(2) Comment on whether bill-and-keep would preclude efficient forms of price discrimination (¶45).

Any regulatory scheme, including bill-and-keep, will preclude some forms of efficient pricing and will mandate some forms of inefficient pricing. Bill-and-keep will not assist in any area where the companies voluntarily engage in price discrimination today. It will only shift costs to end users.

The Commission has previously mandated price discrimination to encourage the growth of certain segments of the industry by excluding some carriers and technologies from having to pay rates that contribute to the recovery of LECs' fixed costs. This has shifted the cost recovery to other carriers and services. The consequences of this cannot be known with certainty, but it is appropriate to consider that it may have inhibited investment in broadband because not all services are contributing to the recovery of current fixed costs. Bill-and-keep will force end users to pay for more fixed costs in their local rates while some carriers will lose their incentive to invest in the telecommunications infrastructure. Investment in the infrastructure should not be discouraged. Investment will increase customer benefits because increases in supply (capacity) lead to lower prices and reliability.

b. Transport Costs.

(1) Comment on alternative approaches to allocating transport costs (¶46).

Alternative approaches to allocating transport costs for toll access include the current FCC Part 36 and Part 69 approach. MECA asks whether the Commission intends to change these.

The toll access transport "problem" has been fixed several times by the Commission and now apparently the Commission is considering fixing it again. This further supports MECA's position that the introduction of new regulatory schemes only introduces new problems.

(2) Comment on DeGraba analysis, including whether potential savings under a meet point arrangement will induce carriers to agree to a more efficient solution to the transport problem, and strength or incentive to negotiate a solution where traffic is unbalanced (¶47).

The emphasis on inducing carriers to agree or on providing an incentive to negotiate a solution shows precisely why DeGraba is misguided. How can true negotiations take place if regulators have predetermined a certain outcome. This focus also shows, as usual, that the proposed "reforms" do not adequately consider the circumstances of small LECs and the statutory provisions relating to them since Section 251 of the FTA contains an exemption from certain duties, including negotiation, for small LECs. DeGraba and the Commission are obviously focusing on the regional Bell operating companies ("RBOCs"). Any action focusing on the RBOCs, however, will impact the small LECs, causing uncertainty and delay. Rather than developing a whole new regulatory scheme, the Commission should take a hands-off approach and let the telecommunication providers negotiate among themselves if they are required to do so.

(3) Comment on whether Atkinson - Barnekov (equally splitting cost of interconnection) is competitively neutral under other circumstances and whether it nevertheless would result in an efficient intercarrier compensation regime (¶48).

Atkinson-Barnekov is not competitively neutral because it forces a single outcome despite that each carrier is situated differently. Predictably there will be winners and losers, but unlike with competition, the result will not be competitively neutral. It will be a regulatory induced arbitrary result. Parties will not be able to negotiate and develop their own solutions when they are told ahead of time what the solution and result will be.

Past Commission refereeing has simply resulted in preferences to some and harm to others. Preferences, such as those given to commercial mobile radio service ("CMRS") carriers by not allowing LECs to recover loop costs from CMRS carriers, are contrary to appropriate policy embedded in the law. If any group should get special attention, as specified in the FTA, it is rural LECs. There is no good reason to give preferences to any other group of carriers when there is no such policy in the FTA.

(4) Comment on whether these and other approaches are efficient, are competitively neutral, and will encourage efficient choices (¶49).

Deregulation is the only efficient and competitively neutral approach. All regulatory approaches share inefficiencies and either intentionally or inadvertently favor certain segments of the industry. Many times, regulators' good intentions hurt consumers by denying companies the flexibility they need. For example, moving to bill-and-keep for interexchange traffic, where networks do not overlay each other, will force local rates for rural, higher cost carriers to increase. This, of course, will cause local exchange customers to migrate from the land line network to cellular service as their primary service or to lose telecommunications services entirely where there are no reliable alternatives in rural areas. Cable companies, which are less regulated, will soon also be competitive alternatives to the land line network; and they too will benefit from this proposed regulatory scheme at the expense of the incumbent rural LECs. Regulation should not arbitrarily

favor certain technologies over the traditional land line network because it will lead to rate increases and cause LECs to lose customers.

In the long distance market, there are efficiencies today that would be undermined by bill-and-keep. It is more efficient for interexchange carriers to use LECs' and other competitive access providers' networks than for them to build parallel overlaid networks. If LECs are forced to increase local rates, it will cause customers to switch from LEC networks, resulting in loss of LEC revenues which would have been available for investment in those networks that interexchange carriers utilize.

(5) Extent to which cost sharing should be a criterion and importance of a regime's equitable cost distribution (¶50).

Cost sharing already exists in the non-overlapping local market where carriers build or lease their portion of the link between end users. However, what does cost sharing have to do with shifting costs to end users (which bill-and-keep will do)?

Further, when there is true competition, all markets will reach equilibrium, the level at which marginal costs equal average costs and at which rates are set. Again, however, what does that have to do with shifting costs to end users?

c. Transactions Costs.

Comment on relative sizes of transactions costs (measuring and billing) for the various alternatives (¶51).

Transactions costs probably would decline with bill-and-keep. However, there is no good reason for the Commission to consider transactions costs. The companies providing service are in the best position to decide whether to negotiate bill-and-keep, bulk bill, or reciprocal compensation. It is up to carriers

to decide what is most efficient for them. In unregulated lines of business, businesses decide how much of their transactions costs are to be included in their prices. Why shouldn't telecommunications providers have the same opportunity? The Commission's decision should be broad enough and flexible enough to allow innovation. Companies should be allowed to succeed or fail based on their own decisions.

3. Bill-and-Keep as a Solution to Existing Interconnection Issues.

a. Comment on whether bill-and-keep or the specific bill-and-keep proposals will resolve existing interconnection problems. Eliminate regulatory arbitrage opportunities? Solve the ISP and one-way-network problems? Dampen schemes to evade access charges? Will COBAK or other forms reduce incentives for carriers to invest inefficiently? (¶52).

Bill-and-keep may resolve some existing interconnection issues in the local market under certain circumstances where service areas overlay each other, but could create problems for interexchange traffic.

Bill-and-keep will not eliminate regulatory arbitrage opportunities. Any regulatory scheme produces some unintended and unanticipated arbitrage opportunities and bill-and-keep will be no different.

Sharing costs equally for interconnection will not preclude carriers with greater market power and financial strength than carriers with smaller or regional markets from using this power in their negotiations and where they choose to place their wire centers. The Commission's sole concern should be that good faith negotiations take place without purposeful delay.

Bill-and-keep will neither solve compensation issues regarding ISPs nor one-way-networks. It will just relieve some carriers of paying their share of creating an ubiquitous network. It will just shift cost recovery between carriers. Some carriers would benefit and some would lose because of this regulatory fiat.

The real cause of the ISP problem is, in part, the inability of LECs to charge per minute of use rates to their end users and , in part, the inability of LECs to charge toll access charges to hybrid ISP-CLEC networks. Bill-and-keep, if flat rated, will exacerbate the problem by forcing low volume users to subsidize high volume users. However, end user traffic sensitive rates based on minutes of use would most likely only apply to originating traffic because end users would resist paying terminating traffic sensitive rates because of the volume of unsolicited telemarketing calls. That begs the question of how those terminating variable costs are to be recovered. All carriers should be allowed to charge rates that recover fixed and variable costs.

Bill-and-keep would allow originating carriers to avoid a portion of their current variable costs by not having to pay for terminating calls on another carrier's network. Currently, if the flow of traffic is unbalanced between carriers, the carrier receiving the greater amount of terminating traffic recovers those additional costs from the originating carrier. With bill-and-keep, it will have to recover those same costs from its end users. Since traffic sensitive per minute of use charges most likely will be resisted by customers and state commissions alike, costs will have to be recovered using flat rates. With flat rates, there will be cross-subsidization between customers. Low volume users will subsidize ISPs located in their service areas and telemarketers located in other LECs' service areas.

Bill-and-keep will not dampen schemes to evade access charges. There are not currently many private schemes to avoid access charges of which MECA is aware. The primary evasion of toll access charges is due to the regulatory scheme for Internet traffic, which treats interexchange traffic as local traffic. Another access charge evasion is by CMRS carriers who do not have to pay for the use of the local loop, which too was caused by regulatory fiat. Bill-and-keep will not help resolve the ISP and CMRS evasion of access charges. The correct solution is to treat ISPs as interexchange carriers, instead of Enhanced Service

Providers, and to subject calls to ISPs to access charges. The Commission appears, through its rule making, to be overly concerned about Internet end user rates. There is no economic reason in a competitive market to avoid paying the true cost of a service. If ISPs charged appropriate usage-sensitive rates to their customers and LECs were allowed to bill access for their interstate traffic, in a competitive market, sufficient alternatives would become available to Internet customers to promote the public interest. Further, if regulators allowed usage sensitive rates for local service then the market should work.

Though the cellular industry has been given regulatory preferences, it still is a good example of how competition can resolve issues. CMRS carriers are reducing their usage-sensitive rates as their capacity grows, i.e. as supply increases, the price paid by consumers declines. Further, they even offer what are the equivalent of flat rates by marketing packages of minutes that in essence are flat rate options for a customer's calling needs.

Though some states allow calling plans based on message sensitive rates, these kinds of plans cannot solve the ISP cost recovery problem because the average length of an ISP call is several times longer than an average voice call. If ISPs paid toll access rates (which are continually decreasing) which then would be passed on to their customers in a reasonable manner, that would solve interconnection problems created by the current regulation. There would be no need for further discussion about bill-and-keep.

Bill-and-keep should not to be used as a tool to influence carriers' investment behavior. Any current inefficiencies were created in part by relatively recent regulatory preferences for certain technologies. The most effective way to deter inefficient investment is to allow carriers to fail, thereby teaching others not to choose the same investment strategy. Why is there a need for regulatory oversight to determine the efficiency of investment in the telecommunications industry when there is no such need in other industries?

The telecommunications industry in the United States has built the premier network throughout the world that allows providers to bring advanced services to almost all Americans at reasonable rates. Who is to say that it is not efficient?

The Commission's own economists in the DeGraba and Atkinson-Barnekov white papers point out the problems that have directly resulted from previous regulation. It is obvious that the Commission now sees the problems that previous regulation has caused. In order to solve these problems, it would be better to undo prior mistaken regulation than to engage in "pancaking" of more regulations on top of earlier mistakes. However, the elimination of preferences given to certain technologies should not be used as an excuse to shift more cost recovery onto the end user of the incumbent land line carrier.

Basic local exchange service in most cases is no longer a true monopoly service and therefore it does not allow LECs to simply pass costs of other services on to local service rates. There are many alternative providers of local service. In addition, even if market conditions allowed land line providers to pass their increased costs on to local service customers, state regulators most likely would not permit a dramatic shifting of costs to local end users. This combined effect will lead to stranded investment, which certainly this Commission would agree is not efficient.

Cellular service providers and soon Internet service providers and cable companies will be effectively competing directly with land line carriers for local service. When, because of inefficient pricing created by regulation, local rates go up, it gives customers the incentive to get off the basic land line telephone network and onto the networks of these competing technologies. While large RBOCs may be able to withstand a loss of some customers with relatively little impact on their earning potential, small rural LECs with very

limited customer bases cannot afford to lose customers, nor can their customers afford the resultant higher local rates.

It is time to treat all technologies the same and eliminate the preferences that were the result of regulation designed to assist fledgling technologies. There is no reason to treat land line providers like pariahs that need to be punished for their past monopoly service, especially since federal and state regulators deemed it to be in the public interest at that time. If preferences are eliminated, incentives for inefficient investment will be reduced without bill-and-keep.

b. Impact of bill-and-keep on terminating "monopolies" and market power and potential solutions such as prohibiting a traffic-sensitive charge for the trunk port? (¶53).

The concern about terminating "monopoly" power should not be so great today because there are many alternatives to traditional land line service, most notably cellular and soon cable and Internet services. Many cellular providers even offer free calling between their customers even though the same calls would be considered interexchange if they were carried on a land line network. Furthermore, if there are "terminating monopolies," they are in both directions. If two carriers attempt to exercise terminating monopoly power on calls between their exchanges, there seems to be little advantage that either could gain if they were allowed to negotiate. One monopolist would cancel out the effect of the other monopolist. Only the Commission's "pick-and-choose" rules inhibit such a resolution.

Terminating toll access charges are used to offset LEC fixed costs and, should they be eliminated, more customers would be forced off the land line network as local rates were increased in order to recover those fixed costs.

In addition, due to the use of common trunk groups and tandem switching, there is no way to exercise any alleged terminating monopoly power. A LEC cannot stop terminating traffic on a carrier-by-carrier basis. The only way to collect compensation is to charge cost based rates that are just and reasonable, which can be supported in court, thus eliminating any benefit to the interexchange carriers in refusing payment. In addition, access bypass is available to interexchange carriers today. It is better to allow the carriers to negotiate appropriate charges with traffic-sensitive rates or use bulk billing options or, if they wish, to negotiate bill-and-keep arrangements.

c. Impact on end-user incentives or decisions to subscribe as a customer or to interconnect as a network (for entities that exclusively originate or that exclusively terminate traffic) (¶54).

Issues relating to whether end users can choose to subscribe as a customer or interconnect as a network should not be considered when evaluating bill-and-keep. State commissions have the authority to license LECs and are better able to determine if entities will actually provide service as a LEC or if they are more like end users. Moreover, this issue has primarily arose only because regulation has created preferences for ISPs. Instead of adding another layer of regulation on an already weak layer, it is better to address the initial error.

d. DeGraba suggests that, if there is a move to COBAK, there should also be a shift from recovering termination costs through per-minute charges, to recovering termination costs through flat monthly charges. The Commission seeks comment on how moving to bill-and-keep might affect end-user rates.

(1) Should the Commission regulate rates charged to end-users for termination?

(2) What is the appropriate rate structure?

(3) Per minute -vs- flat monthly charges?

(4) Customer choice between paying per-minute or flat monthly rates for termination?

(5) Protections against unwanted calls? (¶55).

The inquiry into whether the terminating rates and rate structure for local service needs to be regulated by this Commission shows that there is a significant risk that the degree of local rate regulation and regulatory intervention would be increased under bill-and-keep. In Michigan, regulatory flexibility for rural incumbents has increased options available to consumers. Increased regulation of local service would be a step backwards. The Commission should avoid clumsy, heavy-handed regulation as cited by Commissioner Furchtgott-Roth and opt for flexibility and allow companies to offer pricing options to their customers that they deem competitive.

DeGraba incorrectly asserts that existing termination charges create an artificial per-minute cost structure for carriers that will tend to result in inefficient per-minute retail prices. (DeGraba, ¶ 95). A per-minute rate structure is not inherently inefficient.

The only service where there are predominantly per-minute rates today is interexchange service. Even there, no evidence exists that the network is underutilized; rather, interexchange traffic is growing. The recent decline in the growth rate of interexchange traffic on the land line network is due to a migration to the cellular network.

With regard to local retail rates, they are predominantly flat-rated and will likely remain so due to (1) customers' being accustomed to flat rates and prevailing customer resistance to usage-sensitive rates and (2) state commission resistance to replacing flat rates with usage-sensitive rates. In addition, where there

are "usage-sensitive" rates, they are generally on a per-call basis (not per minute), which is not truly usage-sensitive, as evidenced by the difference in length between an average voice call and an average ISP call.

Further, uniform flat retail rates should not be favored in regulatory policy over usage-sensitive retail rates. Uniform flat rates cause cross-subsidization from low volume users to high volume users, which arguably encourages "inefficient" use of the network since high volume end users are encouraged to use the network more than if they had to pay the true cost of their usage. This cross-subsidization does harm those customers who have a phone solely for the personal security it provides or who use local service less often than the average end user.

If there were true usage-sensitive (per minute) wholesale rates between carriers and those costs were passed on to heavy users on a per minute basis, there would arguably be greater efficiency. The customers using the network more would pay more for it. As to cost-causality, those who use it more will pay more for it and those with less need will pay less. That is efficient because it clearly maximizes individual welfare.

COBAK also relies on other unsupported assumptions, such as the assumption that a network can and should be built to an optimal level. In reality, network components are purchased in discrete sizes. Switches and cables are bought in certain sizes as made available by the manufacturer, which keep costs down. Those who design networks and those familiar with TELRIC studies know this. There is always excess capacity. The network is designed to be low cost, economical, high quality and meet future demand, which means there is always excess capacity.

Per-minute retail rates allow customers the choice of paying for what they need and use. With flat rates and even with blocks of time (minutes of use) option, customers may incur inefficiencies by having

to pay for minutes that they do not need. CMRS customers using blocks of time calling plans may pay for more minutes than they use. Flat rate plans can be like sales where customers receive a "bonus" gift they do not really want or need, but get a useless extra item anyway. Companies should be able to offer customers the option of paying for and receiving only the amount that they want. The CMRS example cited by DeGraba is not an example of success, but is an example of arbitrage caused by favoritism in regulation.

When competition and alternative pricing plans were made available to customers in Michigan, prices did not shoot up. The only significant rate increases were the result of incumbent LECs complying with the TELRIC (TSLRIC) standard imposed by regulation. There is no need for this Commission to attempt to regulate local service where it traditionally has had no role. The suggestion that regulation of local rates may be needed is an acknowledgment that there may be flaws in the whole untried bill-and-keep interconnection system and is an attempt to fix problems that this new regulation will cause. The best solution is to avoid the problems in the first place by not implementing bill-and-keep.

With regard to unwanted calls, if costs are not imposed on the originating carrier or the originating caller, then there is an incentive for originating calling to increase. By reducing the originator's cost for a terminating call to zero, originating calling will be stimulated, producing more unwanted calls. Ironically, this will increase the total cost to terminating carriers who will need to shift even more costs to end users. Telemarketers will receive windfall and end users will pay for unwanted calls that will increase in number.

e. Comment on the need for regulatory oversight on the level and structure of termination rates -vs- competition as regulator (¶56).

While there might be less regulation of terminating carrier interconnection rates, this potential decrease would be offset by increases in regulation of other matters. For example, the Commission is suggesting that there would be a need for local rate regulation, as discussed above. This merely is a regulatory shell game that does not reduce regulation or move the market to true competition. The proper course is to move toward deregulation and competition - not to shift the jurisdiction of regulation or the service or technology to be regulated.

f. Comment on DeGraba's claim that the proposal for allocating transport costs is easy for regulators to implement, that it will encourage voluntary negotiation, and that incremental costs are easy to estimate; and comment on the relative advantages of methods of allocating transport costs (¶57).

Negotiation would proceed much better with neutrality in regulation. The Commission does not need to confine the available results to a limited set of parameters.

In addition, small companies are exempt from the duty to negotiate. This regulation does not address their situation and would create more problems for them, which they cannot address with their limited resources. The consumer would be better served by rural LECs utilizing their resources to deploy new technologies such as broadband, rather than spending those resources on sorting through and implementing a new regulatory scheme.

4. <u>Disadvantages of Bill-and-Keep</u>.

a. Will new and unexpected problems outweigh benefits of the new regime? Comment on the issues or problems likely to arise if move to bill-and-keep (¶58). Comment on concerns regarding DeGraba and Atkinson - Barnekov, including: "central office" definition and location (¶59), the unwanted call problem (¶60), regulating transport rates of ILECs (¶61), how regulators apply "incremental cost" concepts and resolve carrier disputes regarding them (¶62), new billing and collection

problems (¶63), and other problems such as increased rates for Internet access or traffic sensitive rates (¶64).

New and unexpected or expected compensation problems for both local traffic and interexchange traffic will likely outweigh the benefits of a bill-and-keep regime.

One problem likely to arise if there is a move to bill-and-keep is the potential re-regulation of local service. Some state legislatures have relaxed their rules and the regulatory structure where there is competition in the local market. Interference with competitive local competition regimes by a federal "cookie cutter" approach will countermand advances made at the state level and likely lead to litigation. Federal rules will likely contradict state-specific policy goals often embodied in state statutes that are pro-competition in the local markets, such as in Michigan. Another problem regarding local service that will result from the move to bill-and-keep is the increase in end user uncollectible accounts due to the significant increases in local rates.

Increases in local rates will also force people off the land line network, or entirely off the telecommunications network (when there are no economic alternatives), causing not only stranded investment, but also consumers without telephone service in some rural areas.

The local rate problems are compounded by the DeGraba proposal to charge toll charges to customers who call customers served by remotely located central offices. (DeGraba, ¶110). This once again is contrary to some state policies designed to benefit end users. In Michigan, for example, the state legislature recently mandated the expansion of local calling areas to include all adjacent exchanges and the Michigan Commission is in the process of implementing this requirement. See MCL 484.2304(11) and Case No. U-12528. DeGraba's proposal is directly at odds with Michigan law and policy.

DeGraba also exhibits a callous disregard for the relationships between customers and their chosen providers. DeGraba proposes toll charges and then states:

> "To the extent that calling parties then complain to customers of the network with the distant central office, those customers might consider changing carriers so that friends and neighbors could call them without incurring toll charges. This potential loss of customers might thus induce the network with the remote central office to negotiate points of interconnection within a local calling area and to bear the cost of such "remote transport" itself. On the other hand, this solution may not be effective if the calling parties do not complain to the called party, or the called party does not care about the toll charges others may pay."

Cavalier statements like this show a bias against incumbents and against the land line network, and a willingness to drive customers away from them. This approach is then not competitively neutral; nor is it technology neutral. The most likely carriers to take these customers, at least in rural areas, are CMRS carriers. The suggestion that the network can "bear the cost" is ridiculous. Under bill-and-keep, the only place for a carrier to get revenues to cover the costs is from end users. If they cannot recover these costs, they simply will not build the network. Proposals such as this will cause what was once the premier network in the world to deteriorate. In addition, DeGraba's references to customer "complaints" is bizarre. All industries strive to please their customers and telecommunications companies are no different. They have spent many years trying to develop good customer relations. Any approach that encourages customer complaints undermines customer relationships and should not even be suggested, let alone given serious consideration.

DeGraba's second approach to the remotely located central office is to require networks with a remotely located switch to provide points of interconnection within a local calling area. This approach is somewhat better, but also has problems. First, it is based on a simplistic model of overlaid networks and simple intra-exchange routing. However, this does not reflect the actual network. In Michigan, there is expanded local calling between adjacent exchanges and local calls are often routed over the toll network using

toll tandem switching. Any new intercarrier compensation regime should not interfere with existing economic call routing. Second, dictating the number of locations by regulatory fiat will not likely produce the most economical solution. It is better that each carrier be responsible for the cost of getting its traffic to or from any incumbent LEC exchange where it provides local service. Thus, bill-and-keep should not be used.

The unwanted call problem is another problem weighing against a bill-and-keep regime. There will be incentive for Telemarketers and others that primarily originate traffic to generate more calls to other carriers since they will not bear any termination costs. Some end users will have the incentive to form pseudo networks on the originating side, thus shifting the costs from originating customers to those receiving unwanted calls. This will encourage even greater expansion of unwanted calling. The best way to avoid this problem is to avoid mandatory bill-and-keep and to allow carriers to negotiate their own arrangements. It is better to adopt regulation that moves the industry toward competition than to create new problems with new rules and then to attempt to solve those problems with even more rules.

Another problem is the amount of regulatory intervention required. DeGraba acknowledges that, at least until competition in transport develops further, it may be necessary to regulate the transport rates charged by incumbent LECs ("ILECs"). He argues incorrectly, however, that this would require no additional regulation of ILECs beyond what is required today. While there might not be more "regulation" per se in terms of the type of regulation, there nevertheless would be new rates, which would require more regulatory activity.

Increases in rates are another problem. In Michigan, first there were increases in local retail rates because of the adoption of total element long run incremental cost ("TELRIC"). Now this bill-and-keep proposal would force local transport rates higher, along with increases in local retail rates. Because of increases in local rates, the amount of end user uncollectible accounts will also increase, as discussed above.

In the long distance market, there are efficiencies today that would be undermined by bill-and-keep. Interexchange carriers ("IXCs") have found that it is more efficient to use LEC networks than for them to build overlaid networks. If LECs are forced to increase local rates, it will cause customers to switch networks, resulting in loss of LEC revenues which would no longer be available for investment in the networks that interexchange carriers utilize.

On the other hand, increased rates for Internet traffic is not a problem of significant concern. While Internet rates will need to be increased, this should not be considered to be a "problem" since Internet users should not be subsidized by other customers, but should pay their fair share of costs.

Other problems with bill-and-keep include the impact that a mandatory and uncertain compensation scheme will have on the ability to raise money in the capital markets. It may hinder investment in the network infrastructure and may limit the offerings available to customers and delay the deployment of broadband. Also, the imposition of a new regulatory scheme will likely delay the move toward deregulation.

b. Comment on the possible application of a bill-and-keep regime to LEC-CMRS interconnection (¶65).

There is no good reason to give a preference to one technology over another. All should be treated the same. MECA is not suggesting that mandatory bill-and-keep is appropriate, but supports its use only as an option to be negotiated. However, if it is implemented as a mandatory scheme, then there is no reason to exclude CMRS technology. Incumbent LEC compensation arrangements should be deregulated to the same extent as CMRS compensation arrangements. The Commission's acknowledgment that it is unaware of complaints against CMRS carriers for excessive termination rates "even in unregulated interconnection arrangements" shows how well deregulation can work. The Commission should not overlook the implications

of its own observation and miss the forest for the trees here. If deregulation works for CMRS, then the implication is to move toward deregulation for all carriers - not just to exempt CMRS carriers from the old or the new regulatory scheme under consideration for the other carriers.

5. ISP-Bound Traffic.

Comment on bill-and-keep for all ISP-bound traffic even in absence of unified regime for other traffic (¶66) [including customer targeting, average rates and incentives to lower UNE rates].

If bill-and-keep is adopted for ISP-bound traffic, a non-unified regime is appropriate. The pseudo "CLECs" terminating only or primarily ISP-bound traffic are not true telecommunications carriers and present a unique problem. The Commission's recent order in the ISP Intercarrier Compensation proceeding has established a framework that should bring this unique problem, which it created, under control. The new framework has brought the level of compensation to these "CLECs" down to a level that some LECs seem to be willing to pay, i.e. to a pain threshold that they can bear. While the compensation to be paid is not yet at the level of actual cost, it is at a bearable level. Even though it is at a bearable level, it nevertheless drives up customer rates beyond what they would be in a deregulated environment.

In addition, undesirable incentives for CLECs to seek these types of customers are being reduced today. The incentive to target customers whose termination costs are lower than average and who predominantly receive traffic is being reduced by rate restructuring. Ameritech Michigan reduced its per-minute charges by establishing a call set-up charge. When incumbents do this, the CLECs who use the incumbent rates as proxies are no longer able to reap as much profit as they did under the previous rate structure.

The best way to achieve a level of compensation that is at actual cost is to allow a free market. CLECs serving ISPs would then face competition and they would have to charge rates closer to their costs.

6. <u>251(b)(5) traffic</u>.

Comment on bill-and-keep for all 251(b)(5) traffic -vs- current per-minute reciprocal compensation rates. Address the benefits of each approach, incentives of each, promotion of competition, negation of effects of market power, pricing signals, relation of price to costs, etc. (¶69). Address the best method for allocating transport responsibilities and costs (¶70). Address three-carrier calls (¶71). Address point of interconnection (POI) issues (¶72). Is bill-and-keep consistent with the FTA, especially in cases of significant imbalances (¶¶ 75 and 76)?

Bill-and-keep should not be mandatory, but should only be a negotiated option, in addition to usage-sensitive compensation rates.

LECs are given broad freedom and authority to establish their own interconnection arrangements under the FTA, as opposed to the Commission dictating what those arrangements are to be. Section 251(b)(5) imposes the duty on <u>LECs</u> to establish reciprocal compensation arrangements for the transport and termination of telecommunications. Section 252(a)(1) gives authority to LECs, stating that incumbent LECs "may" negotiate and enter into binding agreements. The pricing standards of section 252(d) contemplate only state commission review of whether LECs are in "compliance" with the Act's requirements. They obviously contemplate that LECs will have the ability to negotiate various types of reciprocal compensation arrangements, including those with usage-sensitive rates for transport and termination. Moreover, the statutory language reveals Congress' belief that bill-and-keep is the exception, not the rule, and that LECs are free to negotiate or establish other types of arrangements. Without the specific statutory

construction language indicating that the statutory provision does not preclude bill-and-keep arrangements, there would be a potential argument that bill-and-keep is not appropriate. Other types of arrangements, such as usage-sensitive arrangements, are clearly appropriate.

The recent infatuation of some Commission economists with bill-and-keep is based to a large extent on unfounded assumptions that have been made, especially the assumption that both the calling party and the called party are cost-causers with regard to any call. In order to even arguably justify bill-and-keep as a mandatory scheme for all, we must assume that both parties to a call are equal cost-causers with the same benefits accruing to both parties, that traffic is balanced between carriers, and that both carriers have the same costs. Without empirical support for any of these assumptions, the whole rationale for bill-and-keep falls apart.

There is no basis for the assumption that both parties to a call are equal cost-causers. In fact, the historic view is that the calling party is the cost-causer since the calling party is the only clearly identifiable party that initiates action. This is the most rational view and would be accurate in the vast majority of circumstances.

Per-minute reciprocal compensation rates therefore can benefit competition since they allow each party to pay by small increments for the costs of completing a call. Bill-and-keep would hurt competition under these circumstances since the cost-causer would not be paying for all costs, but would be allowed to use service below cost.

Bill-and-keep would still be useful as an option for special circumstances, such as where two carriers have relatively balanced traffic and similar costs or where there is de minimis traffic between carriers.

The disadvantages of applying bill-and-keep to interexchange traffic will be discussed below.

Regarding the exchange of local traffic, assuming for the sake of argument (1) that both the calling and called parties benefit equally, (2) that there is balanced traffic between all carriers, and (3) that all carriers have the same costs so that bill-and-keep is logically an option, then there is a need to specify the responsibility for transport by limiting the regulatory scheme to historic ILEC service areas. Historically, placement of central offices was dependent on physical, geographic, or demographic considerations. Carriers exercised their business judgment in this regard without attempting to game the system.

If bill-and-keep is mandatorily introduced, central office placement could be used in an anti-competitive manner against LECs with established central office locations. A new entrant could position a wire center in a location to force unnecessary costs on those already situated. On the other hand, if the new entrant is required to bear the cost of building or leasing transport to connect to the established carriers, that will encourage better economic decision-making. The new entrant will consider numerous factors, such as the location and population density of customers, and sound economics will drive the decision on where to locate.

With regard to three-carrier calls, bill-and-keep is even more problematic. Under bill-and-keep, the intermediate transiting carrier does not have a customer from which it can recover its costs. In addition, three-carrier calls often require tandem switching. In Michigan, where LECs are currently implementing expanded "local" calling that requires the involvement of multiple non-overlapping carriers, the toll network is being utilized to carry calls classified as "local", which avoids unnecessary investment to connect with each LEC. These arrangements are cost-effective and bill-and-keep would cause a disruption of this arrangement and harm the public policy goal mandated by Michigan's legislature.

As to Points Of Interconnection ("POIs"), under bill-and-keep, rules should be established that prevent a huge burden from being imposed on existing carriers. If bill-and-keep is made mandatory, the cost

of a call may have to be borne by the originating carrier's end users. There is no good reason to require end users of established LECs to pay for the cost of transport to a POI that potentially could be on the other side of a LATA when that call will only be routed back to an end user in the same service area where the call was initiated. Once the RBOCs receive interLATA relief and there is no more need for the LATAs, carriers may have only one POI per state. For that matter, without LATAs, why not have one POI for an entire region of the country, thus compounding the back haul problem?

CLECs compete by entering the exchanges of incumbent LECs on an exchange-by-exchange basis. The exchange is the logical common denominator to use. In any exchange where a CLEC provides local service, it should be required to have a POI and to be responsible for the cost of getting their traffic to and from that exchange. Existing carriers should not have to pay to transport their traffic across a LATA or across a state or across several states to reach another carrier to solely provide local service.

Currently, the same is true for CMRS traffic. When calls are delivered to rate centers outside the local calling area, they are delivered over the toll network and should be treated as toll calls for intercarrier compensation purposes. Toll access charges apply.

If a new entrant chooses not to locate its wire center within an established LEC's local calling area, then the new entrant should bear the responsibility for transport to and from that calling area. Those costs should be passed on to the new entrant's customers - those who chose that LEC - not the end users of another LEC, which the bill-and-keep proposal would require.

In paragraphs 73 and 74, the Commission has appropriately cited applicable provisions of the FTA. These provisions show, however, that bill-and-keep is merely an acceptable option for carriers. There is a major difference between a state commission selecting a bill-and-keep arrangement in an arbitration

proceeding as the best solution for two carriers on the basis of the evidence presented when the carriers cannot agree, and this Commission imposing it mandatorily on all carriers regardless of their circumstances. Mandatory bill-and-keep is not consistent with the FTA.

Optional bill-and-keep may be appropriate under numerous different circumstances, depending on the weight given to various relevant factors by the carriers involved. They may consider any relevant costs, including transactions costs, the need for speedy entry, and the cost of arbitration or litigation. Even if their traffic is not in balance or their costs are asymmetric, they may still choose this solution for competitive reasons. If both parties decide that their costs will be covered best by not sending a check to the other party in exchange for not receiving one, why is there any need for government intervention? The parties are in the best position to determine their own solutions.

Additionally, the Commission should not set bill-and-keep as the default method of billing when carriers are unable to negotiate an agreement. This will have the effect of making bill-and-keep the de facto "choice." If the FCC makes bill-and-keep the default choice, one of the two parties in the negotiations likely will see bill-and-keep as economically favorable. This party will have no incentive to negotiate for anything other than bill-and-keep and will therefore, at best, negotiate so that it appears that the parties are unable to negotiate an agreement. This scenario is not speculative since similar action took place regarding choosing a meet point billing option. When this Commission chose to make the multi-bill/multi-tariff option the default method for billing access when carriers were unable to negotiate an agreement, almost 100% of the access billing became subject to the multi-bill/multi-tariff option. In some circumstances, one party involved in the process was unilaterally notified by the other parties that "they" could not reach an agreement on the meet point billing option and therefore the parties were required to use the default option of multi-bill/multi-tariff.

This occurred even when no negotiations had ever occurred between the parties. Similar results could be expected if bill-and-keep were established as a default mechanism. It should be left as an option, but not as a default.

Bill-and-keep will allow for arbitrage. A simple example is as follows: A hotel with a private branch exchange ("PBX") obtains certification to be a carrier. It charges patrons for originating calls as many hotels do today. Under a bill-and-keep regulatory arrangement, the hotel would not have to pay to terminate calls throughout the local calling area. In addition to operating its own PBX (as it does today), it would only have to share the costs of a PBX trunk to the closest local wire center, thus avoiding the cost of termination. If the outgoing local calls are terminated by another carrier, then that carrier would be subsidizing the CLEC-hotel. In most cases, outgoing local calls outweigh incoming local calls at hotels. This is an obvious arbitrage problem that will be created by bill-and-keep.

7. LEC-CMRS Interconnection.

Comment on Commission authority over LEC-CMRS interconnection. Does the Commission have exclusive jurisdiction and are states pre-empted? (¶¶86-87). Is forebearance appropriate? (¶88). How would interconnection work and how would rates and terms be established? (¶89).

The Commission should read all the provisions of the FTA as a whole in order to give effect to all of the provisions. The requirements of sections 251 and 252 by their terms apply to CMRS traffic since it is telecommunications traffic. The various provisions of the FTA are consistent if they are viewed as establishing a broad federal regulatory framework to govern the offerings of all CMRS providers (including the ability to preempt state rate and entry regulation of CMRS) and the general authority to order carriers to interconnect, but reserving to the states limited authority over specific interconnection issues so that CMRS

carriers are treated in the same manner as other telecommunications providers, without discrimination or preferences in the competitive marketplace.

State commissions should not be preempted from maintaining jurisdiction over specific CMRS interconnection issues, such as approaches to establishing reciprocal compensation arrangements for the transport and termination of traffic. MECA has filed a state CMRS end office termination tariff on behalf of its members in Michigan that provides for the termination of CMRS traffic. By establishing this arrangement, numerous CMRS providers avoid the need for individualized negotiations with approximately twenty-eight different small LECs, each of whom might have a limited amount of traffic terminating in their exchange(s).

Michigan has allowed small LECs who are exempt from negotiation requirements to establish their rates and terms through the use of tariffs if they choose to do so. As long as they are willing to pay any termination charges lawfully imposed by others for local traffic, the arrangement is a reciprocal compensation arrangement for the transport and termination of telecommunications traffic under §251(b)(5).

The Commission should forbear from interfering with state regulation in this regard. These types of arrangements have evolved under unique circumstances. For example, in Michigan, there is a long history behind the CMRS calling arrangements in rural LEC exchanges where there are three carriers involved. Under the regulatory, network and industry framework in Michigan that has been in place for many years, calls originating from a land line customer in a rural LEC exchange that go to a CMRS rate center in a different LEC's local calling area belong to the Primary Exchange Carrier (the toll tandem carrier) and are the responsibility of that tandem carrier. (This rule was chosen because CMRS wire centers are directly connected to the toll tandem switch.) Only calls that go to a CMRS rate center within the originating local calling area are considered to be calls originating from the rural LEC. This arrangement was negotiated years ago and was

put into place by the Michigan Public Service Commission, and it has worked well in Michigan. Other states may have a similar uniqueness in their arrangements. MECA does not believe that these types of arrangements should be precluded; rather, states should be allowed to exercise limited authority in this regard.

MECA is not suggesting that the states should be allowed to start regulating CMRS providers and their relationships with their end users, but there is a role for state commissions, who understand the local circumstances, to exercise authority regarding these aspects of interconnection and intercarrier compensation.

There is good reason to exercise forbearance, at least in states like Michigan because in Michigan rates charged by MECA's members to CMRS providers for termination are TELRIC (TSLRIC)-based. In addition, consumers have not been harmed in any way by the existence of these arrangements. Third, these arrangements are easy to administer and enhance competition while also taking into account the unique circumstances of the rural LECs. If forbearance is exercised, the rates and terms for interconnection would be established as they are today - by tariff with state commission oversight.

8. <u>LEC-CMRS Intercarrier Compensation</u>.

a. Should bill-and-keep be applied to the various types of CMRS-LEC interconnection? (¶90 et seq), and to LEC-paging interconnection? (¶93).

As discussed above, the rural LECs should be able to continue to establish appropriate arrangements through tariffs, if they choose to do so. However, bill-and-keep should not be precluded as an option.

b. Comment on whether access charges, when they apply to interexchange traffic, should also apply to CMRS carriers and to what extent (¶94).

State toll access charge arrangements are preserved under the FTA. Section 251(d)(3) states that in prescribing and enforcing regulations to implement the requirements of section 251, the Commission shall not preclude the enforcement of any regulation, order, or policy of a state commission that (A) establishes access and interconnection obligations of LECs; (B) is consistent with the requirements of section 251; and (C) does not substantially prevent implementation of the requirements of section 251 and that part of the FTA. Section 251(g) provides that LECs are to provide exchange access to IXCs with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that applied prior to enactment of the FTA. In accordance with these provisions and state orders, access charges should continue to apply to Type 2 calls carried by Primary Exchange Carriers from rural LEC exchanges to CMRS rate centers that are not in the local calling area of the rural carrier. These calls are carried utilizing the toll network facilities and have been treated in Michigan as calls belonging to the Primary Exchange Carriers. On the other hand, as agreed upon between MECA and most CMRS carriers, where the CMRS rate center is in the local calling area of the rural LEC, including any EAS or expanded local calling areas, the call should continue to be treated as a local call and local reciprocal compensation charges should apply.

9. <u>Interstate Access Charges</u>.

What comes after "CALLS" and should bill-and-keep apply? (¶97).

Bill-and-keep should not apply to interexchange traffic. Not all LECs are toll carriers. Moreover, not all customers have the same toll carrier for both interLATA and intraLATA calling. Moving to bill-and-keep would force many LECs to become toll carriers. Toll carriers generally do not have local facilities but use the facilities of LECs. Without LEC facilities, they would not be able to provide their service; therefore, they should compensate the LEC for that use.

Now that the problem with CLEC access rates has been addressed, there is no evidence that there is anything wrong with the current CPNP regime.

Furthermore, toll access provides approximately 70 to 80% of the revenues of rural LECs. If the current regime is upset and the recovery of more fixed costs is shifted to end users, then the rates for local service would be driven up significantly.

The only way for bill-and-keep to work is for companies to be both LECs and toll providers, forcing companies into lines of business that they are not ready to provide. Furthermore, toll rates would probably go up in rural areas, which is against the spirit of the FTA.

As universal service subsidies are being removed from access rates, they are moving to cost-based levels and are appropriate for the future. There is no reason to change a system that works.

C. COMMENTS ON REFORMING CALLING-PARTY'S-NETWORK-PAYS REGIME IF THE FCC DECIDES NOT TO ADOPT BILL-AND-KEEP. (Whether and how they can be reformed). (¶98).

The existing CPNP regime is preferable to bill-and-keep. It works well. One beneficial reform would be to apply the regime equally to all types of providers without giving a preference to any one technology. Another is to require the intermediate (tandem) carrier to pass appropriate carrier identification information (Carrier Identification Codes or Carrier Information Parameters, i.e. "CICs" or "CIPs") along with other call information routed to the terminating carrier regardless whether it is a LEC or CMRS carrier.

This is an important issue that is continuously overlooked. There is a need for the intermediate (tandem) carrier to pass on the originating carrier's identification with each call record. Identification of the originating carrier on all call information is necessary to ensure that all calls are properly billed to that carrier. For appropriate inter-company billing and compensation to be accomplished, the correct

CIC or CIP must be provided to the terminating carrier. Though the intermediate tandem carrier receives this information, none pass it on to the terminating carrier. This practice is universal. Correcting it is especially critical for any calls routed on common trunk groups and the requirement to pass this information is essential if the CPNP is to be reformed. The lack of such a requirement is one of the greatest weaknesses of the current CPNP compensation scheme. Due to the lack of this information, not all carriers have been able to be properly billed and terminating carriers must rely on ratios and other means.

1. Can CPNP Regimes be Efficient?

a. Comment on rate level issues, such as: the appropriate cost methodology and the Commission proposal to adopt FLEC for access, including intra-state access, in addition to reciprocal compensation rates (¶99); whether FLEC should be used to determine "additional costs" of terminating calls that originate on another carrier's network under § 252(d)(2), or are short run costs appropriate, or zero costs due to inexhaustible capacity? (¶101); asymmetrical reciprocal compensation for LEC-CMRS interconnection (¶¶104-105); a single cost of transport and termination for all CLECs statewide -vs- individual rates, and similarly for CMRS (¶106); the current tandem-rate rule and regulatory arbitrage (¶107); the IXC argument that, to the extent access charges exceed economic cost, ILECs have incentive to discriminate in favor of their long distance affiliates via predatory price squeeze (¶108); and any other rate level issues (¶108).

Preferably, market-based rates would be used to establish rate levels. If the Commission chooses not to move to complete deregulation and market-based rates, then TELRIC can be used to establish a cost floor for rates. If companies are allowed to set their rates with TELRIC plus common costs, this will prevent cross-subsidies and enhance competition. This is the law in Michigan and it works satisfactorily.

The best way to promote competition and efficiency under this regime is to require all carriers, regardless of technology or incumbent or non-incumbent status, to base their rates on their own TELRIC studies.

These studies should be based on TELRIC or TSLRIC (as it is referred to in Michigan) principles established by this Commission and adopted by state commissions. The companies should have the choice of performing their own TELRIC study based on this Commission's principles or using one of the Commission's approved proxy models. Studies prepared specifically for rural providers are more accurate than proxy models. The proxy models this Commission reviews are not designed for and cannot replicate the circumstances in rural areas. However, if a rural LEC chooses to use a proxy model for sake of cost savings, the rural LEC should be allowed to do so. Another way to help alleviate the burden on small LECs, and to provide a convenient means for state commission review and for interested parties to have input, is to allow joint studies for small groups of similarly situated LECs in any given state. This group approach was adopted in Michigan and has been very successful.

It is important that rates based on TELRIC include shared and common costs.

If TELRIC studies are used in rural areas, the Commission should not expect rate levels to necessarily decline. The experience in Michigan shows for the rural LECs there that total costs under a TELRIC study are not much different than they would be under an embedded cost study. This type of result is predictable for higher cost, less densely populated, geographically expansive rural areas.

The TELRIC cost studies for all carriers should be subject to state commission review wherever this is feasible. In Michigan, the state commission has had the expertise and resources to review

the cost studies of the incumbent LECs and there is no reason to believe that it cannot review the studies of all providers in Michigan.

This Commission would not likely have the resources to review the studies of all providers. This Commission could defer to the states for the majority of these studies, but also allow some studies to be presented to it, especially if those studies were used to set interstate access rates, such as those for interstate pools or those for multi-state companies. Most studies, however, could be reviewed and approved by state commissions and used for both intrastate and interstate rate-setting purposes. Once approved by a state commission, the carrier could set its interstate rates using that study and submit a certification to this Commission that its rates are based on the state-approved study. Once a study is performed, another should not be required unless significant changes to that carrier's network are expected. This will conserve the resources of the state commission or the carrier required to do such studies.

TELRIC can be used to determine the additional costs of terminating calls that originate on another carrier's network. There is a cost to the local loop and IXCs and others do actually use that loop. Those who use it should pay for it. Moving the cost of the local loop to zero would give a free ride to some carriers, producing economic distortions. If carriers do not wish to pay to use another carrier's property, they should find an alternative, such as building their own.

In order for economic incentives to function appropriately and to encourage fair competition, asymmetrical reciprocal compensation and individual rates should be allowed in lieu of statewide rates. All carriers that provide access to toll calls, including CLECs and CMRS providers, should submit cost studies and base their rates on their studies. Different carriers have different costs and the failure of all to do their own studies is a sham that causes incorrect signals in the market place. Rates that are not company-specific take

away incentives to be efficient and produce arbitrage. We do not dispute the claim of Sprint PCS that a CMRS provider's costs may exceed the ILEC proxy, but any particular provider making this claim should be required to base it on a study meeting the same TELRIC standards as incumbent LECs.

Since all ILECs base their rates on their own TELRIC studies, the alleged ILEC incentives for predatory price squeezes in favor of their own long distance affiliates are not theoretically there.

Another rate-related issue relates to the use of tariffs. Rural LECs should be allowed to continue to use tariffs in lieu of individual negotiated agreements with all other carriers. The cost of negotiations would severely tax the resources of the small, rural LECs and would not be efficient for any of the parties with whom they interconnect.

b. Comment on <u>rate structure issues</u>, such as: whether an average per-minute rate structure can efficiently recover the TS costs of interconnection, whether for reciprocal compensation or access; alternative rate structures; how to deal with problems associated with peak-load pricing; and whether a peak-load structure can eliminate regulatory arbitrage opportunities (¶110); and alternative structures, such as capacity-based and multi-part with call set-up and per-minute charges (¶111).

One rate structure issue that the Commission did not identify is the need for a ubiquitous or uniform rate structure that allows a provider to charge all carriers the same rate elements. Access providers should be able to recover for all elements of the network from all carriers, no matter what technology they use, including recovering for the cost of the local loop from CMRS carriers.

With the elimination of preferences for technologies like CMRS, current rate structures are adequate to allow efficient recovery of costs. Problems associated with peak load pricing would be alleviated by using TELRIC as a basis for rates. A TELRIC study accounts for peak load usage. The forward-looking

network is designed to efficiently operate, taking into account the heaviest usage. Thus, uniform or average rates (whether per-minute or flat) that apply to all carriers without regard to the service or technology allow for adequate cost recovery. Furthermore, they are easier to develop and audit.

Alternative rate structures should be allowed, subject to state commission review. In Michigan, some carriers have implemented rates structures that provide for a call set-up charge. This type of rate structure makes economic sense and was done in part to minimize reciprocal compensation problems associated with ISP-bound traffic. The Michigan Public Service Commission approved of this solution. Carriers, with the assistance of state commissions, are working through these problems and resolving them, and thus there is no need for federal regulatory intervention.

Another alternative rate structure that should be explicitly allowed is the optional negotiated use of bulk bills. A bulk bill for a block of usage would be easy to audit and would provide incentives for carriers to maximize their use of the network. The variety of intercarrier compensation options available to carriers should be increased, instead of minimized as a move to mandatory bill-and-keep would do.

c. Comment on <u>single point of interconnection issues</u>, such as: which carrier should bear cost of transport to POI (¶112); if a carrier establishes a single POI in a LATA, should the ILEC be obligated to interconnect there? (¶113); can access charges be imposed for calls originating and terminating within local calling area, but crossing boundary due to placement of POI? (¶113); does single POI compel inefficient network design by forcing LEC to provide extra transport or are CLECs being forced to inefficiently replicate the ILEC network? (¶114).

As discussed above, new entrants should be responsible for the cost of getting their traffic to the incumbent LEC. Established carriers should not have to bear the cost to transport their traffic across a LATA or across a state when it is not toll traffic. Rules should be established that prevent a huge burden from

being imposed on existing carriers. If bill-and-keep is made mandatory, the cost of a call may have to be borne by the originating carrier's end users. There is no good reason to require end users of established LECs to pay for the cost of transport to a POI that potentially could be on the other side of a LATA when that call will be routed back to an end user in the same service area where the call was initiated. Once the RBOCs receive interLATA relief and there is no more need for the LATAs, carriers may have only one POI per state. For that matter, without LATAs they may have one POI for an entire region of the country, thus compounding the back haul problem.

CLECs compete by entering the exchanges of incumbent LECs on an exchange-by-exchange basis. The exchange is the logical common denominator to use. In any exchange where a CLEC provides local service, it should be required to have a POI and to be responsible for the cost of getting their traffic to and from that exchange.

Any other rule would allow large CLECs to game the system using their market power to abuse small, rural LECs who have already established their local networks in order to serve their local communities.

Incumbent or established LECs should not be required to reach POIs of new entrants as they spring up all over a LATA or state. This would place a burden on established carriers; would not benefit their customers; would increase costs to their customers; and would create a complex network design. It is arguably more fair and efficient for CLECs to have POIs in the exchange where they intend to provide service. Very few CLECs actually provide statewide service in any manner - through resale, UNEs or otherwise. While CLECs often seek licenses throughout an entire state, the Michigan Public Service Commission has discovered that they do not intend to serve the entire state or that they do not have the financial or managerial ability to do so.

Therefore, the Michigan Legislature has adopted rules requiring new entrants to serve the areas they petitioned so serve within a year and to market their service to all potential customers within two years of receiving a license. See MCL 484.2302(1)(a) and 484.2303(1). The Michigan Public Service Commission has even required CLECs to reduce the size of their licensed service areas when they do not provide service throughout the original licensed area. By requiring established LECs to bear the cost of reaching a new entrant when that new entrant may never provide service in their entire requested service area, would be clearly economically inefficient. In light of the number of CLEC bankruptcies, if this Commission implements such a rule, it would endanger the financial solvency of the incumbent LECs.

d. Comment on <u>virtual central office codes</u>.

Virtual NXXs are a means of arbitrage to avoid paying access charges for interexchange traffic that should be paid. If a call is an interexchange call outside the local calling area, the provider should pay transport. Toll access charges should apply to these calls.

2. <u>Can CPNP Regimes Resolve Existing Issues and will they be Administratively Feasible</u>?

Comment on how CPNP can be modified to deal with issues, to allow easy administration by regulators, and to address regulatory arbitrage, and connection costs and benefits of unified CPNP regime (¶¶116-120).

The existing CPNP regime works fairly well, but rates and rate structures should apply equally to all carriers, regardless of technologies. Within the broad regulatory framework, there should be some recognition of the limited resources of small, rural carriers. Rural incumbent LECs have the only statutory exemption from negotiation and certain other requirements and their unique circumstances should be taken into account. In Michigan, the rural LECs have filed their CMRS termination and local termination rates in tariffs

and this practice should be allowed to continue. There have been no major interconnection complaints in Michigan. The only major fights in Michigan have involved the large urban carriers and IXCs over the desire for a uniform cost structure for UNEs, wholesale and toll access.

It is important to bear in mind that access charges generate approximately 70 to 80% of revenues for the rural LECs and that this helps to keep local rates reasonable. This Commission should be very cautious when considering any changes to the CPNP toll access charge regime. Bill-and-keep would likely cause large shift in cost recovery to end users which would be detrimental to customers in rural areas. This Commission should put greater weight on universal service, connectivity, and rate comparability goals and the needs of customers in rural areas. This Commission should reject a mandatory bill-and-keep regime, especially for toll access.

One essential modification to the current CPNP regime, however, is a requirement that carrier with the intermediate tandem pass the CIC or CIP to the terminating end office company with each call. Without this, some carriers will continue to receive a free ride without paying the cost of termination. The Michigan Public Service Commission has recognized in some circumstances that if the carrier with the intermediate tandem routes terminating traffic down common trunk groups onto the network of the terminating LEC without identifying information, the company with the intermediate tandem is responsible for the termination charges; however, this is not the perfect solution. It would be better for the appropriate originating carriers to be billed for all their traffic. The inability of LECs to accurately bill due to the refusal of the intermediate carrier with the tandem switch to pass the necessary carrier identification (CIC or CIP) with the call record hinders effective competition and cost recovery.

D. <u>OTHER ISSUES</u>.

1. Legal Authority.

Does the FCC have authority to establish bill-and-keep for reciprocal compensation? Does it have the authority to modify existing interstate access rules to move them to bill-and-keep and do state commissions have similar authority? (¶121).

This Commission does not have authority to mandate bill-and-keep as the only type of local interconnection arrangement, as discussed above. It is only an option available to carriers under the FTA.

There is also a lack of authority at both the federal and state levels to eliminate the toll access charge regime and replace it with a bill-and-keep regime.

Despite the expansion of federal jurisdiction into some intrastate matters relating to local competition, primarily due to the enactment of section 251 in 1996, there remains a general division under the Communications Act of 1934, as amended, between state and federal authority over most intrastate and interstate matters, and there is a Congressional intent to maintain the toll access charge regime to the greatest extent possible. State toll access charge arrangements are explicitly preserved under the FTA. Section 251(d)(3) states that in prescribing and enforcing regulations to implement the requirements of section 251, the Commission shall not preclude the enforcement of any regulation, order, or policy of a state commission that (A) establishes access and interconnection obligations of LECs; (B) is consistent with the requirements of section 251; and (C) does not substantially prevent implementation of the requirements of section 251 and that part of the Act. This is consistent with the general separation of state and federal jurisdiction set forth in section 2 of the Act, 47 U.S.C. 152. In accordance with the Supreme Court decision in AT&T v. Iowa Utils. Bd., 525 U.S. 366 (1999), the new federal regulatory regime under the 1996 amendments extends into areas traditionally subject to state jurisdiction for local competition; however, there is no indication that the

amendments were intended to shift the balance of state and federal jurisdiction regarding toll access. Moreover, in Michigan, the statutory scheme explicitly provides for toll access charges and their elimination would be contrary to the Michigan Telecommunications Act. See MCL 484.2310.

Similarly, there is no authority to replace interstate toll access charges with a bill-and-keep arrangement. MECA pointed out above that bill-and-keep is only an option for local interconnection under the FTA and that it may not be mandatorily imposed even for local interconnection. In addition to this, there are indications that Congress intended for the toll access charge regime to remain in place. Section 251(g) provides that LECs are to provide exchange access to IXCs with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that applied prior to enactment of the FTA under any court order, consent decree, or regulation, order, or policy of this Commission, and until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after the date of enactment. This section was intended to ensure that toll access charges would continue to apply. While it indicates that this Commission can change the toll access charge regulations and replace them with new ones, it does not purport to grant authority to eliminate toll access charges altogether.

2. Jurisdictional Responsibility.

Impact on balance of FCC and state responsibilities and impact on other FCC and state regulations? (¶122).

If bill-and-keep is adopted, it would increase regulatory activity. The states are in the best position to handle specific interconnection disputes or company-specific issues since they regularly deal with carriers operating in their state and are familiar with local networks.

States should retain authority to review TELRIC studies, even if they are used for toll access, as discussed above.

Mandatory bill-and-keep is inconsistent with state policies that favor competition and a move toward deregulation. Bill-and-keep is more restrictive and is a move toward continued regulation and away from true competition.

3. Impact on End-User Prices and Universal Service.

Will there be reductions in per-minute charges and increases in flat rate charges? Would the portion of the bill subject to rate averaging requirements [§254(g)] be reduced, thus increasing rates of customers in high-cost areas? Impact on penetration and universal service (¶123 - 124).

There will definitely be increases in flat rate charges for local service under a bill-and-keep regime. If bill-and-keep is adopted, all carriers should be allowed to impose per-minute charges to prevent subsidies from low volume user to high volume users.

Many rural LECs provide primarily local service and access service, but do not provide toll service. Since 70 to 80% of their revenues come from access, a change from toll access charges to bill-and-keep would force local rates up. Customers would leave the land line network for alternative technologies or would be forced off the telecommunications network entirely, especially since universal service support has not kept pace with customer needs. Bill-and-keep would be catastrophic for rural areas.

The impact on local rates would severely impact penetration, contrary to universal service goals and the desire for efficient use of the network. This Commission should continue to promote comparable local service rates in urban and rural areas and to assure that rural rates remain affordable. Bill-and-keep

would undermine these important goals by reducing access revenues, which are relied on as the major revenue stream to help keep rural local rates down.

4. Impact on Interconnection Agreements Between International Carriers. (¶125).

5. Impact on Interconnection Agreements Between Internet Backbones. (¶127).

6. Impact on Small Entities.

Comment on relative importance of a unified regime -vs- needs of small entities, including potential different compliance timetable? (¶128).

Most small incumbent LECs in Michigan are rural carriers with customers who desire high quality, reasonably priced telephone service as much as customers in urban areas. Their needs are just as important as the needs of urban customers.

A proposal with so many obvious flaws that relies on broad, unproven assumptions to even be arguably or theoretically better than the existing CPNP regime should be rejected for the sake of consumers. If this Commission desires to benefit consumers, it should concentrate its efforts and promoting facility-based competition (increasing capacity, i.e. supply) and deregulating the telecommunications industry. Above all else, eliminating toll access charges would be devastating to small LECs and their customers.

7. Further Possible Approaches to Intercarrier Compensation.

Are there other types of intercarrier compensation not yet addressed, especially unified approaches, and how do they encourage efficient usage of network, solve problems, etc? (¶129). Market-based contract approach, including issues regarding refusals to carry traffic (¶130). Circumstances under which the use of tariffs rather than contracts would be more efficient or better resolve problems (¶130).

Another type of intercarrier compensation is the use of bulk bills as an option to be negotiated. They reduce administrative and transactions costs. They encourage the carrier purchasing the service to use the network to its fullest extent since the carrier has paid a flat rate.

A market-based contract approach is the best and most efficient regime. This Commission simply needs to retain certain dispute resolution authority or to delegate it to the states and issues regarding refusals to carry traffic and similar problems will be resolved on a case-by-case basis. The Michigan Telecommunications Act provides for this type of approach (see MCL 484.2204) and it has worked well as deregulation has been implemented in Michigan.

Tariffs should continue to be allowed in lieu of negotiating individual agreements with all carriers for small rural LECs. Small rural LECs have limited resources. With over 30 small rural incumbent LECs in Michigan and an increasing multitude of CLECs and CMRS providers, many of whom have been required by Michigan statute to provide free local calling to adjacent exchanges, including those of the small incumbents, it would be an overly burdensome task for each incumbent LEC to negotiate individual agreements with each CLEC and CMRS carrier. Tariffs provide an efficient means for the small LECs to establish appropriate arrangements. The rates are cost based and there have been no complaints regarding their use. Their use does not prevent these LECs from agreeing to other arrangements where appropriate.

IV. CONCLUSION

In general, bill-and-keep may have some merit for use for local service competitors where service areas overlay each other. However, it has no merit for interexchange traffic, such as toll access, where networks do not overlay. The best approach for all traffic would be to exercise forbearance authority to allow

freedom of contract and the free market to control. Bill-and-keep should only be one of several options available to carriers for intercarrier compensation.

Respectfully submitted,

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